IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1986 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AMRISHKUMAR SHANTILAL PATEL - Petitioner(s)
Versus
VINUBHAI MAGANBHAI PATEL & 2 - Respondent(s)

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Appearance :
MR NIKHIL JOSHI FOR MR PRADEEP PATEL for Petitioner(s) : 1,
MR BS PATEL for Respondent(s) : 1,
MRS RANJAN B PATEL for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 18/08/2006

ORAL JUDGMENT

1 This petition under Article 227 of the Constitution of India is filed by the petitioner who moved application Exhibit 27 in Special Civil Suit No. 43 of 2002 praying to be impleaded as plaintiff No.2 in the said Special Civil Suit in the following circumstances.

2 Respondent No. 2 is the original plaintiff while respondent No.1 herein is the original defendant. It is the say of the plaintiff that a sum of Rs. 5 lacs with interest at the rate of 3% p.m. was borrowed by the plaintiff from one Bhailalbhai Dahyabhai of village Sundalpara, Taluka Umreth. That the defendant is the Power of Attorney Holder of said Bhailalbhai Patel. On 12.3.2002 the defendant called upon the plaintiff and his real brother, the petitioner herein, to forthwith return the entire amount with interest payable to Bhailalbhai, but as the plaintiff expressed his inability to fulfill the demand, the defendant asked the plaintiff and the petitioner to accompany the defendant to Nadiad. That ultimately the defendant took the petitioner and the plaintiff to village Sureli at 10.00 p.m. on 12.3.2002 and by coercion forced the petitioner and the plaintiff to sign certain promissory notes, non-judicial stamp papers as well as register maintained by Stamp Vendor and/or Notary Public.

3 Immediately on the next day the plaintiff served the defendant with legal notice to return all the blank papers on which the signatures were obtained and not to misuse the same

but as the notice could not be served the plaintiff instituted Civil Suit No.92 of 2002 on 19.3.2002 in the Court of Civil Judge (J.D), Anand. The defendant filed written statement in the said suit contending that the petitioner had executed a sale-deed on 14.3.2002 as Power of Attorney Holder of the plaintiff.

4 The plaintiff therefore filed Special Civil Suit No. 43 of 2002 with a prayer to set aside the sale-deed alleged to have been executed by the petitioner in his capacity as Power of Attorney Holder of the plaintiff. The Special Civil Suit came to be filed on 26.4.2002. Thereafter on 27.1.2003 the petitioner moved application Exhibit 27 seeking permission to be impleaded as plaintiff No. 2 in Special Civil Suit No. 43 of 2002. This application came to be rejected by the Trial Court vide impugned order dated 13.2.2003.

5 The learned Advocate for the petitioner has not been able to establish as to how the impugned order suffers from any jurisdictional error so as to require intervention of this Court in exercise of jurisdiction under Article 227 of the Constitution. Even on the facts the learned Advocate for the petitioner has failed to point out that the impugned order suffers from vice of perversity so as to enable this Court to intervene in exercise of powers under Article 227 of the Constitution.

6 The Trial Court has rightly held that for the same cause of action both the executant of the Power of Attorney and the Power of Attorney Holder need not be impleaded as plaintiff.

Furthermore, it has correctly been observed by the Trial Court that the petitioner can be examined as witness on behalf of the plaintiff to establish the case of the plaintiff. In the circumstances, not only is there no error legal or factual, in the impugned order of the Trial Court but even on facts there is nothing which would merit acceptance of the petition.

7 In the result, the petition is rejected. Rule discharged. Interim relief stands vacated. There shall be no order as to costs.

(D.A.Mehta, J.)

m.m.bhatt